

EXHIBIT H

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WMC MORTGAGE CORP.

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUN 1 2005

GORDON PARK-LI, CLERK
BY: 
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

PATRICIA C. BARBERA,

Plaintiff,

v.

WMC MORTGAGE CORP., a California
Corporation; MILLENNIUM FORECLOSURE
SERVICES; DOES 1 through 20, inclusive,

Defendants.

Case No. CGC-01-322066

~~PROPOSED~~ ORDER
GRANTING DEFENDANT WMC
MORTGAGE CORP.'S MOTIONS
IN LIMINE NOS. 1, 2, AND 4,
DENYING WMC MORTGAGE
CORP.'S MOTION *IN LIMINE*
NO. 3, AND DENYING
PLAINTIFF'S MOTION FOR
LEAVE TO AMEND

Date: May 11, 2005
Time: 9:00 a.m.
Dept.: 210
The Honorable Peter J. Busch

Complaint filed: June 11, 2001
Trial Date: None set

~~PROPOSED~~ ORDER

Defendant WMC Mortgage Corp.'s ("WMC") Motion *in Limine* No. 1: To Exclude Evidence Or Argument Regarding Plaintiff's Private Attorney General Claim, WMC's Motion *in Limine* No. 2: To Exclude Evidence or Argument Regarding the Consumer Legal Remedies Act ("CLRA"), WMC's Motion *in Limine* No. 3: To Exclude Evidence and Argument regarding Res Judicata and Estoppel Arising From Plaintiff's Bankruptcy Proceedings, and WMC's Motion *in Limine* No. 4: To Exclude Evidence or Argument Regarding Rescission as well as Plaintiff Patricia Barbera's Motion for Leave to Amend Complaint came before this Court for hearing on May 11, 2005 at 9:00 a.m. John G. Warner appeared on behalf of plaintiff, and Michael J. Agoglia and Heather A. Moser appeared on behalf of defendant. Having read and considered the motions, the accompanying declarations, and other pleadings and papers on file herein; all parties having had an opportunity to be heard; and good cause appearing therefore, the Court hereby rules as follows:

(1) WMC's Motion *in Limine* No. 1: ~~To Exclude Evidence Or Argument Regarding Plaintiff's Private Attorney General Claim~~ ^{in light of the change in the status of published law since the hearing and plaintiff's substitution of counsel.} is hereby GRANTED with respect to the application of Proposition 64 to plaintiff's private attorney general claim. Two published appellate authorities, *Thornton v. Career Training Ctr., Inc.*, 128 Cal. App. 4th 116 (2005), and *Frey v. Trans Union Corp.*, 127 Cal. App. 4th 986 (2005), bind this Court to apply Proposition 64, which precludes plaintiff from pursuing a private attorney general claim. The propriety of allowing plaintiff to ~~amend to add class allegations in light of the application of Proposition 64 is hereby reserved.~~

(2) WMC's Motion *in Limine* No. 2: To Exclude Evidence or Argument Regarding the Consumer Legal Remedies Act is hereby GRANTED. The Legislature specifically eliminated the term "credit" from the definition of "consumer" in enacting the CLRA. Compare Assembly Bill No. 292, 1970 Reg. Sess. (Jan. 21, 1970), with Assembly Bill No. 292, 1970 Reg. Sess. (Jan. 21, 1970) (as amended Aug. 7, 1970). The Court finds that, applying settled principles of statutory construction, the CLRA does not apply to credit transactions. Because the CLRA claims at issue here all relate to the credit transaction between plaintiff and WMC, plaintiff's first cause of action for alleged violations of the CLRA is hereby DISMISSED. Moreover, the Court finds that even if the CLRA applied, plaintiff's claim for damages under the CLRA would have to

1 be, and is hereby, STRICKEN because plaintiff failed to comply with the statutory notice
2 procedures set forth in Civil Code section 1782.

3 (3) WMC's Motion *in Limine* No. 3: To Exclude Evidence and Argument regarding
4 Res Judicata and Estoppel Arising From Plaintiff's Bankruptcy Proceedings is hereby DENIED.
5 WMC has withdrawn its argument under res judicata because it was not alleged as an affirmative
6 defense. Although the Court does not find that plaintiff is blameless for her failure to list her
7 claims against WMC in her asset schedules, the elements of judicial estoppel are not met in this
8 instance ^{-- at least in part} because plaintiff did not obtain a "substantial benefit" from the omission.

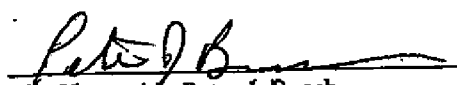
9 (4) WMC's Motion *in Limine* No. 4: To Exclude Evidence or Argument Regarding
10 Rescission is hereby GRANTED. Rescission is not an available remedy under Unfair
11 Competition Law, California Business and Professions Code section 17200 *et seq.*

12 (5) Plaintiff's Motion for Leave to Amend is hereby DENIED. Allowing plaintiff to
13 amend her claims as proposed would cause considerable prejudice to WMC, and that prejudice
14 clearly outweighs the considerations favoring amendment.

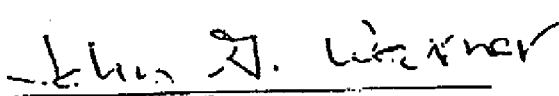
15 The parties are hereby ordered to appear at a case management conference on June 1,
16 2005, at 9:00 a.m. in order to discuss whether plaintiff intends to pursue this case in light of the
17 Court's rulings. A joint case management conference statement is due on May 26, 2005.

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19 IT IS SO ORDERED

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21 Dated: 6/1, 2005


The Honorable Peter J. Busch
JUDGE OF THE SUPERIOR COURT
COUNTY OF SAN FRANCISCO

22
23
24 Approved as Conforming to the Court's Order:

25 
26 John G. Warner, Esq.
27 Counsel for Plaintiff
28 Patricia Barbera

1 be, and is hereby, STRICKEN because plaintiff failed to comply with the statutory notice
2 procedures set forth in Civil Code section 1782.

3 (3) WMC's Motion *in Limine* No. 3: To Exclude Evidence and Argument regarding
4 Res Judicata and Estoppel Arising From Plaintiff's Bankruptcy Proceedings is hereby DENIED.
5 WMC has withdrawn its argument under res judicata because it was not alleged as an affirmative
6 defense. Although the Court does not find that plaintiff is blameless for her failure to list her
7 claims against WMC in her asset schedules, the elements of judicial estoppel are not met in this
8 instance because plaintiff did not obtain a "substantial benefit" from the omission.

9 (4) WMC's Motion *in Limine* No. 4: To Exclude Evidence or Argument Regarding
10 Rescission is hereby GRANTED. Rescission is not an available remedy under Unfair
11 Competition Law, California Business and Professions Code section 17200 *et seq.*

12 (5) Plaintiff's Motion for Leave to Amend is hereby DENIED. Allowing plaintiff to
13 amend her claims as proposed would cause considerable prejudice to WMC, and that prejudice
14 clearly outweighs the considerations favoring amendment.

15 The parties are hereby ordered to appear at a case management conference on June 1,
16 2005, at 9:00 a.m. in order to discuss whether plaintiff intends to pursue this case in light of the
17 Court's rulings. A joint case management conference statement is due on May 26, 2005.

18
19 **IT IS SO ORDERED**

20
21 Dated: _____, 2005

22 _____
The Honorable Peter J. Busch
JUDGE OF THE SUPERIOR COURT
COUNTY OF SAN FRANCISCO

23
24 Approved as Conforming to the Court's Order:

25
26 _____
27 John G. Warner, Esq.
Counsel for Plaintiff
28 Patricia Barbera

PROOF OF SERVICE BY MAIL

(CCP 1013a, 2015.5)

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT WMC MORTGAGE CORP.'S MOTIONS *IN LIMINE* NOS. 1, 2, AND 4, DENYING WMC MORTGAGE CORP.'S MOTION *IN LIMINE* NO. 3, AND DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

Patricia C. Barbera 24 Caribe Isle Novato CA 94949	Rita K. Johnson 21 Tamal Vista Blvd., Suite 168 Corte Madera CA 94925
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 1st day of June, 2005.

Carol J. Peplinski
(typed)

(signature)